

Before the
Administrative Hearing Commission
State of Missouri



JANICE MADDEN,

Petitioner,

vs.

BOARD OF THERAPEUTIC MASSAGE,

Respondent.

No. 13-0723 TM

DECISION

We deny Janice Madden’s application for a student license as a massage therapist because she pled guilty to identity theft.

Procedure

On May 2, 2013, Madden filed a complaint appealing the Board of Therapeutic Massage’s (“Board”) decision to deny her application for a student license as a massage therapist (“the application”). On May 24, 2013, the Board filed its answer. On August 30, 2013, we held a hearing on the complaint. Assistant Attorney General Daryl Hylton represented the Board. Madden appeared *pro se*. The matter became ready for our decision on November 4, 2013, when Madden’s written argument was due.

Findings of Fact

1. On September 11, 2009, while employed as a nurse in Missouri,¹ Madden obtained a co-worker's account information from documents in her locker and charged a cell phone bill in excess of \$1,000 to the co-worker's personal bank account.
2. On November 18, 2010, Madden pled guilty to the Class A misdemeanor of identity theft² for the aforementioned conduct.
3. Madden applied to the Board for a student license as a massage therapist. On April 3, 2013, the Board denied Madden's application.³

Conclusions of Law

We have jurisdiction to hear Madden's complaint.⁴ The applicant has the burden to show that he or she is entitled to licensure.⁵ We decide the issue that was before the Board,⁶ which is the application. We exercise the same authority that has been granted to the Board.⁷ Therefore, we simply decide the application anew.⁸ When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application.⁹ In this case, the Board's answer cites § 324.262.1 and .2(1), which provides:

1. The board may refuse to issue, renew or reinstate any license required by sections 324.240 to 324.275 for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a

¹ Madden's nursing license was revoked on September 13, 2012.

² Section 570.223. Statutory references are to RSMo Supp. 2012 unless otherwise noted.

³ Madden's application was marked as Respondent's Exhibit C, but never offered into evidence. Therefore, we have no evidence in the record as to the actual date of the application. However, we do have Madden's testimony and the Board's answer admitting to the denial of the student application alleged in the complaint to confirm that there was an application and the date of its denial.

⁴ Sections 324.262.1 and 621.045.

⁵ Section 621.120, RSMo 2000.

⁶ *Department of Soc. Servs. v. Mellas*, 220 S.W.3d 778 (Mo. App., W.D. 2007).

⁷ *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. banc 1990).

⁸ *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974).

⁹ *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any license issued pursuant to sections 324.240 to 324.275 or any person who has failed to renew or has surrendered his or her license for any one or any combination of the following causes:

(1) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of the profession regulated pursuant to sections 324.240 to 324.275, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

Essential Elements of Fraud, Dishonesty, or Violence

An essential element is one that must be proven for a conviction in every case.¹⁰ Madden pled guilty to § 570.223, which provides:

1. A person commits the crime of identity theft if he or she knowingly and ***with the intent to deceive or defraud*** obtains, possesses, transfers, uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his or her use.

(Emphasis added.)

Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.¹¹ It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.¹² Section 570.223 requires the intent to deceive or defraud and thus includes both dishonesty and fraud.

¹⁰ *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

¹¹ *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

¹² MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

Violence is defined as “exertion of physical force so as to injure or abuse[.]”¹³ Identity theft does not require an exertion of physical force so as to injure or abuse. Therefore, this crime does not contain violence as an essential element.

Reasonably Related to the Duties of a Massage Therapist

Reasonable relation is a low threshold. To relate is to have a logical connection.¹⁴ When a client is receiving a massage, he or she is generally in a room, alone with the massage therapist, with their eyes closed while their belongings are nearby. This type of setting allows for an individual to easily commit the crime of identity theft, to which Madden pled guilty. Thus, this crime is reasonably related to the qualifications of a massage therapist.

Moral Turpitude

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”¹⁵

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,¹⁶ a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:¹⁷

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and

¹³ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1396 (11th ed. 2004).

¹⁴ *Id.* at 1050.

¹⁵ *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

¹⁶ 213 S.W.3d 720 (Mo. App., W.D. 2007).

¹⁷ *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

(3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

Identity theft requires the intent to deceive or defraud, which necessarily involves moral turpitude, and, is therefore a Category 1 crime.

Summary

There is cause under § 324.262.1 and .2(1) to deny Madden a student license as a massage therapist and we deny Madden a student license as a massage therapist.

SO ORDERED on December 20, 2013.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner